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10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13

14 UNITED STATES OF AMERICA,  
15 Plaintiff,  
16 v.  
17 ADAM SHAFI,  
18 Defendant.

Case No.: CR 3:15-CR-0582 WHO  
**ADAM SHAFI REPLY TO UNITED  
STATES OPPOSITION TO MOTION  
FOR BILL OF PARTICULARS**

Court: Courtroom 2, 17th  
Floor  
Hearing Date: August 24, 2017  
Hearing Time: 1:30 p.m.

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23 **REPLY IN SUPPORT OF MOTION FOR BILL OF PARTICULARS**

24 In arguing that a bill of particulars is not appropriate in the instant case because the  
25 government has “repeatedly particularized” its theory of prosecution, the government appears  
26 to have misunderstood the purpose of Mr. Shafi’s motion requesting a bill of particulars.  
27 Government’s Opposition to Def’s Mtn. for a Bill of Particulars at 11:7-9. The purpose of Mr.  
28 Shafi’s request for a bill of particulars was to allow him to “prepare his defense and ascertain

1 what facts were presented to the grand jury,” and to “inform the Court of the facts alleged, so  
 2 that the court can determine the sufficiency of the charge.” *United States v. Long*, 706 F.2d  
 3 1044, 1054 (9th Cir. 1983); *See also United States v. Resendiz-Ponce*, 549 U.S. 102, 107  
 4 (2007) (*citing Hamling v. United States*, 418 U.S. 87, 117 (1974)).

5 There is clear Ninth Circuit case law that states that a bill of particulars can  
 6 “supplement the indictment by providing more detail upon which the charges are based.”  
 7 *United States v. Inryco, Inc.*, 642 F.2d 290, 295 (9th Cir. 1981). In other words, a bill of  
 8 particulars can further explain the evidence upon which charges in an indictment are based.  
 9 Furthermore, a bill of particulars can also be used by a defendant for clarification: a “motion  
 10 for a bill of particulars is appropriate where a defendant requires clarification in order to  
 11 prepare a defense.” *United States v. Long*, 706 F.2d 1044, 1054 (9th Cir. 1983).<sup>1</sup>

12 That being said, in its’ Opposition, the government has made clear that it has no  
 13 evidence of contact between Shafi and Al-Nusra (nor ISIS) and that it believes it doesn’t need  
 14 any as this is an attempt case. Opp’n at 11:5-9; 13:5-10, fn. 10.<sup>2</sup> Considering that

16 <sup>1</sup> In Footnote 12 of the Opposition, the Government misrepresents Mr. Shafi’s reference to  
 17 *United States v. Nagi*, No. 15-2122 (W.D.N.Y. July 31, 2015) [Docket No. 12]. Footnote 12  
 18 asserts that Mr. Shafi did not correctly characterize the *Nagi* case because he did not mention  
 19 that the district court rejected the request for a bill of particulars in that case. Government’s  
 20 Opposition to Def’s Mtn. for a Bill of Particulars, Fn. 12 at 16. However, the purpose was not  
 21 to show that the court ruled in favor of the defendant on the request for a bill of particulars, but  
 22 rather to show that in that case, unlike in Mr. Shafi’s case, there was in fact evidence of direct  
 23 contact with ISIL operatives prior to the defendant’s travel. *United States v. Nagi*, No. 15-2122  
 24 (W.D.N.Y. July 31, 2015) [Docket No. 12].

25 <sup>2</sup> The Government explicitly states that “the United States is not required to prove that the  
 26 defendant *was under* the ‘direction or control’ of the al-Nusrah Front,” at the time he attempted  
 27 to travel. Opp’n. at 13:7-8. The Government goes on to request that the court “reject the  
 28 defendant’s invitation in this case to create a new and contrary rule that contact with a foreign  
 terrorist organization is required for an attempted material support charge.” *Id.* at 15:12-16.  
 However, the Government is mistaken in assuming that there is in fact a rule that contact with a  
 foreign terrorist organization is *not* required, as this issue has not been decided in either  
 direction in the Ninth Circuit or the Supreme Court.

Nor is there any binding authority on what qualifies as sufficient evidence to prove an attempt  
 in the context of subsection (h). It seems clear that if a defendant had contact with a FTO and  
 was arrested at the airport while en route to fly to the FTO, that would be sufficient for an  
 attempt. It remains to be seen, however, if, as is alleged here, a defendant has had no contact

1 representation, the defense no longer believes a bill of particulars is necessary and believes the  
2 August 24th hearing can be taken off calendar (three motions remain pending for hearing on  
3 October 12, 2017).

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6 Respectfully submitted,

7 Dated: August 17, 2017

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26 whatsoever with a FTO, no idea whether the FTO has any interest in having him join, and no  
27 specific plan for how to actually reach the FTO or any of its members, but rather arrives at an  
28 airport with only a wing and a prayer, that will be sufficient to meet the constitutionally-  
mandated coordination requirements of subsection (h). This is, of course, assuming that Mr.  
Shafi's intent was to actually fight with Al-Nusra, which is a matter of dispute as well.